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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,521	02/21/2002	Luciano Mondani	25-335	4703
23117	7590	11/10/2005	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			FOX, CHARLES A	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/078,521

Applicant(s)

MONDANI ET AL.

Examiner

Charles A. Fox

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on September 6, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 6, 2005 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Abels et al. Regarding claim 14 Abels et al. US 4,125,199 disclose a side shift assembly for a forklift comprising:

a carriage comprising a pair of vertical members (101) that are horizontally spaced;

a frame support member (104) secured transversely to said vertical members;

side shift operator means (122) for causing lateral movement of said frame, wherein said means is slidably received in a portion of said frame support member;

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a side shift frame comprising an upper cross member (105a), a lower cross member (105) and at least 2 side members (107);

said upper cross member having a lower contact surface for sliding engagement with said frame support member (104);

wherein said upper member further comprises a planer front portion that protects the side shift operator means by preventing good carried by the forks to touch the front face (104a) of the support member which forms a portion of the side shift operator means;

said upper cross member adapted to support lifting forks.

In regards to claim 15 Abels et al. also discloses that the upper surface of the support member is convex and the lower surface of the upper cross member is concave, wherein said surfaces are slidably engaged with each other.

In regards to claims 16 and 17 Abels et al. further teach that said side shift frame is a quadrilateral shape with parallel side forming a rectangle.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 21-24 and 3,5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad et al. in view of Reeves. Regarding claims 21-24,3 and 7 Bostad et al. US 5,368,435 teach a sideshift assembly for a forklift comprising:

- a carriage comprising a pair of vertical members (16) that are horizontally spaced;

- a frame support member (33) secured transversely to said vertical members;

- wherein said vertical members are movably secured in the mast of said forklift;

- a side shift frame comprising an upper cross member (34), a lower cross member (28) and at least 2 side members (30,32);

- said upper cross member having a lower contact surface for sliding engagement with said frame support member (33);

- said side shift frame having a rectangular shape;

- side shift operator means (52) for causing lateral movement of said frame, wherein said means is located in a portion of said frame support member. They do not teach the device as having a fork position device. Reeves US 4,392,772 teaches a fork positioner for a forklift truck, said positioner comprising:

- first and second shoe members adapted to slide horizontally along a sliding surface (24) of a side shift carriage;

- each of said shoes adapted to receive a shank portion of a fork, said contact portion of said shoe being coplanar with a front face of a side shift frame;

- said positioner adapted to move said shoes relative to each other;

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wherein said shoes are adapted to move to a center of the side shift frame when at a first position and proximate the edges of said side shift frame when at a second position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bostad et al. with a fork positioner as taught by Reeves in order to allow an operator to change the spacing of the forks from the operators seat while maintaining the operators view of the forks.

In regards to claim 5 Bostad et al. also teach that the upper surface of the support member is convex and the lower surface of the upper cross member is concave, wherein said surfaces are slidably engaged with each other. See figure 12.

In regards to claim 6 Bostad et al. also teaches said upper cross member defines a planer portion overhanging a front side of said support member.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad and Reeves as applied to claim 22 above, and further in view of Bolzoni et al. Bostad and Reeves teach the limitations of claim 22 as above, they do not teach the fork shoes as sliding on the upper and lower surface of the side shift frame. Bolzoni et al. DE 198-05-790 teaches a fork positioner for a forklift truck, said positioner comprising:

first and second shoe members (14) adapted to slide horizontally along a sliding surface (33) of a side shift carriage;

each of said shoes adapted to receive a shank portion of a fork, said contact portion of said shoe being coplanar with a front face of a side shift frame;

said positioner adapted to move said shoes relative to each other such that the shoes are equidistant from the centerline of said side shift frame at all times;

wherein the bottoms of said shoes slides on a lower sliding surface of the side shift frame. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bostad and Reeves with a fork positioner as taught by Bolzoni in order to positively hold the forks vertical position, thereby avoiding binding of the shoes as they are laterally shifted.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad et al. and Reeves as applied to claim 22 above, and further in view of German patent 200 20 292 U1. Bostad et al. and Reeves teach the limitations of claim 22 as above, they do not teach the side shift being driven by a pair of hydraulic cylinders. German patent '292 teaches a side shift carriage that uses two single action cylinder to move a side shift frame in one of two direction depending upon which cylinder is engaged, wherein each of the cylinders are sealed to prevent the escape of hydraulic fluid around the piston. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bostad et al. and Reeves with the cylinders as taught by the German '292 patent in order to simplify the hydraulic system by using single action cylinders to move the side shift frame.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad et al., Reeves and German '292 as applied to claim 8 above, and further in view of French Patent 76 02832. Bostad et al., Reeves and German '292 teach the limitations of claim 8 as above, they do not teach pads between the cylinders and the frame.

French patent '832 teaches placing piston pads between a hydraulic cylinder and a side shift frame member. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bostad et al., Reeves and German '292 with piston pads as taught by French patent '832 to spread the load applied to the frame over a larger area.

Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad et al. and Reeves as applied to claims 22 and 23 above, and further in view of Sorlie. In regards to claims 11 and 25 Bostad et al. and Reeves teach the limitations of claim 22 as above. Reeves further teaches the forks are maintained at any selected distance from the center line of the side shift carriage. They do not teach any particular type of drive system for the fork positioner. Sorlie US 5,190,436 teaches using hydraulic cylinders to position forks within a side shift frame. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Bostad et al. and Reeves with the hydraulic cylinder taught by Sorlie in order to drive the fork positioner using a well known drive means.

Claims 12,13 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Bostad, Reeves and Sorlie as applied to claims 11 and 25 above, and further in view of Bolzoni. Bostad, Reeves and Sorlie teach the limitations of claims 11 and 25 as above, they do not teach a chain loop for moving the shoes in tandem. Bolzoni teaches that said center fork positioner is comprised of an upper chain and a lower chain forming a chain loop, wherein said chain loop is used to move said first and second shoes at the same time. It would have been obvious to one of ordinary skill in the art, at



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the time of invention to provide the device taught by Bostad, Reeves and Sorlie with a chain positioner as taught by Bolzoni et al. in order to maintain the lift forks in a balanced position in relation to the center line of the fork truck, thereby making the vehicle more stable.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abels et al. as applied to claim 16 above, and further in view of German patent 200 20 292 U1. Abels et al. teach the limitations of claim 16 as above, they do not teach the side shift being driven by a pair of hydraulic cylinders. German patent '292 teaches a side shift carriage that uses two single action cylinder to move a side shift frame in one of two direction depending upon which cylinder is engaged, wherein each of the cylinders are sealed to prevent the escape of hydraulic fluid around the piston. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Abels et al. with the cylinders as taught by the German '292 patent in order to simplify the hydraulic system by using single action cylinders to move the side shift frame.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abels et al. and German '292 as applied to claim 18 above, and further in view of French Patent 76 02832. Abels et al. and German '292 teach the limitations of claim 18 as above, they do not teach pads between the cylinders and the frame. French patent '832 teaches placing piston pads between a hydraulic cylinder and a side shift frame member. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Abels et al. and German '292 with piston pads

as taught by French patent '832 to spread the load applied to the frame over a larger area.

***Response to Amendment***

The amendments filed on September 6, 2005 have been entered into the record.

***Response to Arguments***

Applicant's arguments filed September 6, 2005 have been fully considered but they are not persuasive. Regarding the argument that the planer front portion of the Abels reference does not come between the cylinder and the forks, the examiner disagrees. While the Abels reference may not show the planer member as being exactly as the illustrated example embodiment, they do meet the limitation of the claims as written as those limitations also read on embodiments of the invention that may or may not be shown. As the reference reads on the claim as written the rejections are held to be valid.

Applicant's arguments with respect to claims 21-24 and 3-13 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Charles A. Fox* 11-7-05

Charles A. Fox  
Examiner  
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